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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 06-CV-617-AS

v.

**Cook Development Corp.,
Birch Creek Construction, Inc.**

CONSENT DECREE

Defendants.

I. BACKGROUND

A. Plaintiff, the United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency ("EPA") filed a complaint alleging that Defendants

Cook Development Corporation and Birch Creek Construction, Inc. ("Defendants") violated the Clean Air Act, 42 U.S.C. §§ 7401-7641, and certain provisions of the National Emission Standards for Hazardous Air Pollutants for asbestos codified at 40 C.F.R. Part 61, Subpart M in the course of Defendants' renovation of the Commodore Apartment building in The Dalles, Oregon in 2001 and 2002; and

B. The United States and Cook Development Corporation agree that settlement of the action against Cook Development Corporation without further litigation will serve the public interest and that entry of this Consent Decree is the most appropriate means of resolving the action against Cook Development Corporation;

NOW, THEREFORE, without any adjudication of fact, and upon consent of the parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows.

II. GENERAL PROVISIONS

1. Jurisdiction: This Court has jurisdiction over the subject matter of and parties to this action pursuant to 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1331, 1345 and 1355. Venue is proper in this District under 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c). The complaint states a claim upon which relief can be granted. Cook Development Corporation waives any and all objections it may have to the jurisdiction of this Court, and for purposes of this Consent Decree, agrees to submit to the Court's jurisdiction.

2. Definitions: Except as otherwise set forth in this Consent Decree, the terms used in this Consent Decree that are defined in 42 U.S.C. §§ 7412(a) and 7602, and in 40 C.F.R. §§ 61.02 and 61.141, shall have the meanings contained therein. The following terms shall have the meaning set forth below:

a. "Asbestos NESHAP" shall mean the work practices and other requirements set forth at 40 C.F.R. Part 61, Subpart M.

b. "RACM" shall mean regulated asbestos -containing material as defined in the asbestos NESHAP.

c. "Threshold Amount" shall mean (1) at least eighty linear meters (260 linear feet) of RACM on pipes; or (2) at least fifteen square meters (160 square feet) of RACM on other facility components; or (3) at least one cubic meter (35 cubic feet) of RACM off facility components where length or area could not be measured previously.

d. "Settling Defendant" shall mean Cook Development Corporation.

3. Signatories: Each undersigned representative of Settling Defendant to this Consent Decree certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Decree and to execute and legally bind that party to the Consent Decree.

4. Parties Bound: The provisions of this Consent Decree shall apply to and be binding upon Plaintiff, Settling Defendant, and Settling Defendant's agents, servants, employees, successors; assigns, contractors and subcontractors, and to all persons, firms, partnerships, or corporations who are or will be acting with any Settling Defendant pursuant to this Consent Decree, or on behalf of, in concert with or in participation with any Settling Defendant with respect to matters governed by this Consent Decree. This Consent Decree shall not limit or affect the rights of the United States or Settling Defendant as against any third parties.

5. Covered Operations: The provisions of this Consent Decree shall apply to all demolition and/or renovation operations subject to the Asbestos NESHAP where Settling Defendant is an owner or operator. Settling Defendant shall require that any renovation or demolition contractor they retain in connection with such renovation or demolition operation complies with the terms of this Consent Decree.

6. Scope of Consent Decree: This Consent Decree resolves only the Settling Defendant's liability for its failure to comply with 40 C.F.R. §§ 61.145, and 150, as alleged in the Complaint filed in this action.

7. Reservation of Rights: Except as set forth in paragraph 6, the United States reserves any and all legal and equitable rights and remedies available to it to enforce the provisions of this Consent Decree, and the Clean Air Act, 42 U.S.C. §§ 7401-7671(q) and its implementing regulations or of any other federal, state, or local laws or regulations. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including Settling Defendant, pursuant to 42 U.S.C. § 7603, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare or the environment. Nor shall anything in this Consent Decree be construed to limit in any way the authority of the United States to cite any violation by Settling Defendants of the Clean Air Act, 42 U.S.C. §§ 7401-7671q and its implementing regulations, including the violations at issue in this action, in any proceedings pursuant to 42 U.S.C. §§ 7420 and 7606. Nothing herein shall be construed to be a release of Settling Defendant by the United States for any criminal violation. Nothing herein shall be construed to be a release of Settling Defendant by the United States for any civil claims not specifically alleged in the Complaint.

8. Duration of Decree: Settling Defendant's obligations under this Consent Decree shall commence upon entry of this Consent Decree. Unless extended by the Court, this Consent Decree shall terminate two years after the date of final entry of the Consent Decree by the Court, or whenever all penalties due and owing under this Consent Decree, including stipulated penalties, have been paid, whichever is later.

9. Retention of Jurisdiction: The Court shall retain jurisdiction to modify and enforce the provisions of this Consent Decree, to resolve disputes arising hereunder, and to

entertain any application and issue any order as may be necessary or appropriate for the construction and effectuation of this Consent Decree.

10. Modification of Decree: Any modification of this Consent Decree shall be in writing and approved by the Court.

11. Effect of Consent Decree: This Consent Decree is neither a permit nor a modification of any existing permit and in no way relieves Settling Defendant of its obligation to comply with all applicable federal, state, or local laws or regulations.

12. Costs: Each party shall bear its own costs and attorneys fees incurred prior to entry of the Consent Decree in this action. Should Settling Defendant subsequently be determined to have violated the terms and conditions of this Consent Decree, then Settling Defendant shall be liable to the United States for all costs and attorneys fees incurred by the United States in any action against Settling Defendant for noncompliance with this Consent Decree.

III. COMPLIANCE PROGRAM

13. Compliance: Settling Defendant shall hereafter comply with the requirements of the asbestos NESHAP and the Clean Air Act, 42 U.S.C. § 7401-7671q in all future demolition and/or renovation operations.

14. Notification: At any time the settling defendant is required to provide notice under the asbestos NESHAP, it shall also provide notice to EPA Region 10. This means that settling defendant shall provide notice prior to beginning a demolition activity whether or not the facility being demolished contains RACM. This also means that settling defendant shall provide notice prior to beginning a renovation activity at a facility containing greater than the threshold amount of RACM. 40 C.F.R. § 61.145(b) describes the time frames and manner by which the notification shall be provided. The EPA notification shall be sent to the following address:

**Asbestos NESHAP Program Manager
Office of Compliance and Enforcement
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, OCE-127
Seattle, WA 98101**

This notice is in addition to any notice required to be given to the appropriate state and/or local pollution control agencies. A copy of such notice shall also be provided to the owner(s) of the facility.

15. Inspections, Sampling and Analysis: Whenever Settling Defendant is the owner or operator of a demolition or renovation operation, Settling Defendant shall ensure that each facility is inspected for RACM prior to the commencement of such operation.

16. Worker Training: Settling Defendant shall require each person assigned to engage in the removal, handling, transportation or disposal of asbestos in connection with any asbestos demolition or renovation operation to have completed, prior to initiating such work, training through an asbestos abatement course approved by EPA pursuant to 15 U.S.C. § 2646. Settling Defendant shall require each person subject to this paragraph to submit a signed, written declaration certifying that the person understands the requirements of the asbestos NESHAPs for demolition and renovation operations and that the person has been or will be licensed under any applicable state or federal law governing the removal and handling of RACM and sufficiently trained prior to the initiation of any such operation to ensure that the operation will be performed in compliance with the asbestos NESHAP.

17. On-Site Supervisor:

a. Designation of Supervisor: For each demolition or renovation operation where RACM is present at or above the Threshold Amount, Settling Defendant shall designate one or more On-Site Supervisors (or, where an independent contractor or subcontractor will

conduct asbestos abatement activities, shall assure that the independent contractor designates one or more On-Site Supervisors).

b. Qualification of Supervisor: For each such demolition or renovation operation, where RACM is present at or above the Threshold Amount, Settling Defendant shall assure that the On-Site Supervisor: (1) has read the asbestos NESHAP prior to the commencement of such demolition or renovation; (2) is licensed under any applicable federal, state, or local law governing the removal and handling of RACM; (3) has personally completed asbestos supervisor training approved by EPA pursuant to 15 U.S.C. § 2646, concerning the supervision of demolition and renovation activities involving asbestos; and (4) has read this Consent Decree.

c. Duties of Supervisor: Settling Defendant shall assure that the On-Site Supervisor shall be responsible for the following duties and responsibilities:

i. To maintain all certificates, licenses and/or training documentation required under this Consent Decree and applicable federal, state, and local laws and regulations at the work site;

ii. To manage all asbestos activities at the work site in a manner so as to assure that the asbestos NESHAPs and this Consent Decree are being complied with at all times and to remain at the site during all activities involving RACM;

iii. To function as the primary contact through which any individual employed at the work site involved with asbestos removal, handling, or disposal shall receive guidance and instructions;

iv. To function as the primary work site contact for EPA and state/local asbestos inspectors and to act as a liaison between inspectors and individuals employed on site;

v. To immediately correct any violations of the asbestos NESHAPs discovered and, if an immediate remedy is not possible, to stop all asbestos removal, handling, and disposal activities until the violations are corrected. During the period of time such activities involving RACM have ceased, all RACM which has been stripped or removed shall be kept adequately wet as required by the asbestos NESHAPs;

vi. To maintain at the work site a copy of all required written notifications, the project specifications, if any, for the demolition or renovation operation, the asbestos NESHAPs and other federal, state, and local asbestos regulations, and any license or permit required by state and local law;

vii. To ensure that each individual employed in asbestos activities at the work site is properly trained, prior to the commencement of the demolition or renovation operation, in accordance with this Consent Decree, and that each person keeps in his or her possession at the work site any license or permit required by federal, state or local law; and

viii. To supervise all aspects of the contract, or portion of the contract, dealing with the demolition or renovation at each such demolition or renovation operation.

18. Non-Waiver of Other Requirements: Nothing in this Section shall be construed as relieving Settling Defendant from any more stringent training obligations imposed or to be imposed by any federal, state or local law or regulation, including but not limited to EPA's regulations promulgated pursuant to the Toxics Substances Control Act, 15 U.S.C. § 2601-2692.

IV. CIVIL PENALTIES

19. Amount of Penalty: Settling Defendant shall pay a total civil penalty of thirty thousand dollars (\$30,000).

20. Deadline and Payee: Payment shall be made within thirty days of entry of this decree by cash or cashiers check, to the U.S. Department of Justice. Payment shall be made in accordance with the instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Oregon following lodging of the Consent Decree.

Notification of all such payments shall be sent to:

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D. C. 20044
Ref: U.S. v. Cook Development Corp., CV 06-617-AS

Deborah E. Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

The notification should reference the case name and civil action number.

21. Judgment Creditor: The United States shall be deemed a judgment creditor for purposes of collection of the foregoing civil penalties.

22. Non-Tax Deductibility: Any penalty payments made under this Consent Decree are not tax deductible.

V. STIPULATED PENALTIES

23. Failure to Pay Civil Penalty on Time: In addition to any other legal remedies available to the United States, for each day that payment of the civil penalty required by Section IV of this Consent Decree is late, Settling Defendant shall pay accrued interest in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. If the penalty payment is more than ninety days late, Settling Defendant shall pay interest in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961 and, beginning on the date payment was due, a penalty charge of six percent per annum on the amount of the initial payment.

24. Failure to Comply with Work Provisions: In addition to any other legal remedies available to the United States, if Settling Defendant fails to comply with any provision of Section III of this Consent Decree, Settling Defendant shall pay stipulated

penalties, upon demand, for each day of each violation in the amount of three thousand seven hundred and fifty dollars (\$3,750.00) per day per violation for each violation.

25. Notification to EPA of Violation: Settling Defendant shall notify EPA Region 10, at the address set forth in paragraph 20 of the Consent Decree, of any violations of this Consent Decree within fifteen days of such violation.

26. Payment of Stipulated Penalties: Settling Defendant shall pay Stipulated Penalties, calculated in accordance with paragraphs 24 and 25 of this Consent Decree, together with interest from the date such payment was due at the statutory judgment rate provided for in 28 U.S.C. § 1961, within fifteen days of EPA's demand for penalty in the same manner as that specified in paragraph 20. In the event that a violation is alleged by the United States to have occurred and such violation has not been reported as provided in paragraph 25, the United States shall notify Settling Defendant in writing of the violation, the failure to notify the United States of such violation, and the Settling Defendant's obligation to pay stipulated penalties plus interest. Settling Defendant shall pay such stipulated penalties and interest within thirty days of the date of EPA's mailing such notice and/or demand, unless Settling Defendant gives notice, within ten days of Settling Defendant's receipt of the United States' demand for stipulated penalties, that each violation is under dispute and therefore subject to the dispute resolution procedures of this Consent Decree. In the event Settling Defendant provides notice of such a dispute of the United States' demand, and either the parties or the Court (pursuant to paragraph 31 of this Consent Decree) determine that Settling Defendant shall comply with the disputed demand, Settling Defendant shall pay the amount demanded plus accrued interest in accordance with the statutory judgment rate provided for in 28 U.S.C. § 1961, from the date the demand would originally have become due if not for the Settling Defendant's dispute thereof.

27. Other Remedies Preserved: This Stipulated Penalty section is in addition to and in no way limits the United States' right to seek such additional relief for violations of the Consent Decree and/or applicable law as is available by law or in equity.

VI. DISPUTE RESOLUTION

28. Exclusivity: Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

29. Applicability: The procedures set forth in this Section VI of this Consent Decree cannot be invoked by Settling Defendant if it has not submitted a notice of dispute in accordance with paragraph 30.

30. Informal Negotiations: Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between the parties to the Dispute. The period for informal negotiations shall not exceed twenty calendar days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends all other parties a written Notice of Dispute.

31. Petition to Court: If the parties cannot resolve their dispute within twenty calendar days of the date the dispute arises, the United States' position shall control unless Settling Defendant files a petition with this Court for resolution of the dispute within ten days of receipt in writing of the United States' final position. The petition shall set out the nature of the dispute and the relief requested and shall specifically refer to this paragraph of the Decree. The United States shall have ten days to file a response to any such petition. Settling Defendant shall bear the burden of proof in any dispute resolution proceeding under this Consent Decree.

32. Effect on Deadlines: The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendant under this Consent Decree not directly in dispute, unless EPA agrees or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment to the United States shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section V of this Consent Decree.

VII. INSPECTION AND ENTRY

33. Any authorized representative of EPA (including a designated contractor) may, upon presentation of credentials to the On-Site Supervisor, without prior notice, enter upon the site of any demolition or renovation operation subject to this Consent Decree to determine Settling Defendant's compliance with the requirements of the Clean Air Act, the asbestos NESHAP, and the provisions of this Consent Decree. Such inspection and entry may include the taking of samples and photographs and the inspection and copying of such records as EPA may deem necessary to determine Settling Defendant's compliance with the requirements of the Clean Air Act, the asbestos NESHAP, and the provisions of this Consent Decree. This paragraph is in addition to and not in limitation of EPA's authority to investigate, inspect or enter premises pursuant to any laws, permits, or regulations.

VII. CERTIFICATION

34. Any notice, report, certification, data presentation, or other document submitted by Settling Defendant under or pursuant to this Consent Decree that discusses, describes, demonstrates, or supports any finding, or makes any representation concerning Settling Defendant's compliance or non-compliance with any requirement(s) of this Consent Decree

shall be certified by a responsible official of Settling Defendant. The term responsible official shall mean a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation.

35. The certification of the responsible official shall be in the following form:

"I certify that the information contained in or accompanying this (type of submission) is true, accurate, and complete."

(Signature)
(Title)

PUBLIC NOTICE

36. This Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment in accordance with 28 C.F.R. § 50.7. The parties agree that final approval and entry of this Decree are subject to the public notice requirements of 28 C.F.R. § 50.7, and the United States may modify or withdraw its consent to this Decree if comments received disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate.

Dated and entered this ____ day of _____, 2006.

United States District Judge

For Plaintiff United States of America:

12/6/2006

Dated

December 1 2006
Dated

Dated _____

Dated 11/16/06

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TERRY COOK
COOK DEVELOPMENT CORPORATION

11/1/06
Dated

PER RAMFJORD
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204

11/2/06
Dated